



30 DEC 2005

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COOPER & DUNHAM, LLP
1185 AVENUE OF THE AMERICAS
NEW YORK NY 10036

In re Application of LUM et al.
Application No.: 10/553,853
PCT No.: PCT/US03/12679
Int. Filing: 23 April 2003
Priority Date: 23 April 2002
Attorney Docket No.: 65532-A-PCT-US/JPW/JW
For: COMPOSITIONS AND METHODS FOR
STEM CELL DELIVERY

DECISION ON
PETITION UNDER
37 CFR 1.137(b)

This is in response to the petition to revive under 37 CFR 1.137(b), filed in the United States Patent and Trademark Office on 19 October 2005 in the above-identified application.

BACKGROUND

On 23 April 2003, applicants filed international application No. PCT/US03/12679 which claimed a priority date of 23 April 2002, and which designated the United States. The international application became abandoned for failure to enter the U.S. national stage by the thirty month deadline or at midnight on 23 October 2004.

Almost a year later, on 19 October 2005, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*: the \$150 basic national fee and a petition to revive under 37 CFR 1.137(b) along with the requisite petition fee of \$750 and an explanation of the delay.

DISCUSSION

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the requisite petition fee; (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional; and (4) any terminal disclaimer (and fee as set forth in 1.20(d)) required pursuant to 37 CFR 1.137(c). Applicant has satisfied items (1) and (2). Item (4) is not required.

With regard to Item (3), Petitioner states that Patricia O'Connell, Vice President and General Counsel of applicant Roger Williams Hospital was advised of the thirty (30) month deadline of 23 October 2004 as late as 07 October 2004 by attorney John P. White of Cooper & Dunham. Petitioner explains that through oversight, Ms. O'Connell did not instruct the law firm to enter the national stage by the thirty month deadline. Petitioner further states that "Prior to October 5, 2005", Ms. O'Connell communicated on several occasions with attorney of record Alan J. Morrison, regarding applicant's "continued interest in entering the national stage in the United States for the subject application and whether doing so would be possible". Petitioner states that "on October 5, 2005, Ms. O'Connell first informed Mr. Morrison that her not instructing Cooper & Dunham LLP to enter the national stage in the United States was due to her

own oversight and was thus unintentional." The fact that communications between applicant and counsel were held regarding the continued interest in pursuing national stage prior to October 5, 2004 without filing the national stage papers earlier raises the question as to whether the delay was unintentional. Petitioner should provide a statement explaining the communications between counsel and applicant "prior to October 5, 2005" showing that the delay in filing the national stage application was unintentional.

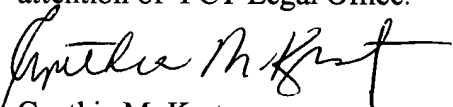
It is appropriate for the Office to require further information as to how the delay in discovering the abandoned status occurred despite the exercise of due care and diligence on the part of applicant and applicant's representatives. Petitioner should explain how the delay in filing the petition occurred despite the exercise of due care and diligence on the part of applicant and his chosen representative. The USPTO cannot conclude that the entire 12 month delay in filing the petition to revive was unintentional. Accordingly, the granting of the petition under 37 CFR 1.137(b) for revival based on unintentional delay would not be proper at this time.

CONCLUSION

Therefore, the petition under 37 CFR 1.137(b) is **DISMISSED** and the application remains **ABANDONED**.

If reconsideration on the merits of this petition is desired, an appropriate response to this decision must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137 (b)."

Please direct further correspondence with respect to this matter to the Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of PCT Legal Office.



Cynthia M. Kratz
Attorney Advisor
PCT Legal Office
Office of PCT Legal Administration

Telephone: (571) 272-3286
Facsimile: (571) 273-0459